

## **DRY NIGHTCLUBS**

### **Chapter 121**

## **DRY NIGHTCLUBS**

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[HISTORY: Adopted by the Mayor and Council of Pocomoke City 01-07-2002 as Ordinance No. 359. Approved 01-08-2002. Note: Chapter number changed from “110” to “121” at publication to correspond with Code book numbering system. Amendments noted where applicable.]

**General Reference: Chapter 230 Zoning.**

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## ARTICLE I General Provisions

### § 121-1. Legislative Findings.

The City Council has determined that:

- (1) Nightclubs, while a legitimate form of entertainment and important to the economy of the City, pose certain dangers that must be guarded against.
- (2) Nightclubs with alcoholic beverage licenses are to a large degree controlled by the Board of License Commissioners, by the licensing procedure and by regulations and limitations placed on their licenses.
- (3) Nightclubs not holding alcoholic beverage licenses are not controlled by the Board of License Commissioners and therefore can be fraught with uncontrolled public health and safety hazards including, without limitation, overcrowding, public drunkenness, motor vehicle dangers from late night activities as well as uncontrolled use of alcoholic beverages and controlled dangerous substances, exhaustion, lewd and lascivious behavior, abuse and harassment, and other health and safety dangers over which the City Government has little control absent the authority of the Board of License Commissioners.
- (4) It is in the best interest of the people of Pocomoke City and the sojourners therein that dry nightclubs as herein defined be licensed and regulated.

### § 121-2. Definitions.

For the purposes of this chapter, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

ADULT means an individual who is twenty-one years of age or older.

ADULT DRY NIGHTCLUB means any dry nightclub whose patrons or admittees are twenty-one (21) years of age or older.

CONVICTION OR CONVICTED means the finding of guilt for a violation of a municipal or county ordinance or state or federal law, adjudication withheld on such a finding of guilt, an adjudication of guilt on any plea of guilty or nolo contendere or the forfeiture of a bond or bail when charged with a violation of a municipal or county ordinance or state or federal law.

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DRY NIGHT CLUB means an establishment in which the primary use is as a gathering place for people regardless of age limitations for purposes of entertainment, dancing, social discourse and/or other social activities in the nature of those generally associated with social clubs, nightclubs, dance halls and after hours clubs as American culture has defined by historical experience but not including theaters, schools, bona fide service clubs, churches, or establishments holding alcoholic beverage licenses. The City Manager or his designee shall make the determination of what constitutes a dry nightclub.

DRY NIGHTCLUB REGULATIONS means the regulations set forth in this chapter.

ENTERTAINMENT – live dancing, a band, disc jockey or recorded music or any other activity designed to entertain customers.

KNOWINGLY means with actual knowledge of a specific fact or facts, or with reasonable inquiry a reasonable person should have known a specific fact or facts.

LICENSE OR DRY NIGHTCLUB LICENSE means a license to operate a dry nightclub.

LICENSEE means a person in whose name a license to operate a dry nightclub has been issued, as well as the individual listed as an applicant on the application for a dry nightclub license.

MINOR means an individual who is under the age of twenty-one (21).

MINOR DRY NIGHTCLUB means any dry nightclub whose patrons or admittees are under twenty-one (21) years of age.

PREMISES means a parcel of land, together with all buildings, structures and uses thereon.

PERSON means an individual, corporation, partnership or other entity which may legally own/operate a dry nightclub.

## **ARTICLE II License**

### **§ 121-3. License required; application for license.**

- A. No person may operate a dry nightclub without a dry nightclub license as well as a City business license as required by Chapter 109 of the City Code.

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- B. A notarized application for a license shall be made on a form provided by the City Clerk. The applicant must be qualified according to the provisions of this chapter.
- C. The applicant shall indicate whether the application is for a minor dry nightclub or adult dry nightclub.
- D. A person who wishes to operate a dry nightclub shall sign the application for a license as applicant. If a person who wishes to operate a dry nightclub is other than an individual, each individual who has an interest in the business must sign the application for a license as an applicant. Each applicant must meet the requirements of section 121-4, and each applicant shall be considered a licensee if a license is granted. In the case of a corporation, all officers must sign as applicants.

### **§ 121-4. Requirements for issuance of license; posting.**

- A. The City Council shall approve issuance or renewal of a dry nightclub license within sixty (60) days after receipt of an application unless the City Manager finds one (1) or more of the following to be true:
  - (1) An applicant is under twenty-one (21) years of age;
  - (2) An applicant has failed to answer or falsely answered a question(s) or request for information on the application provided;
  - (3) An applicant has been convicted of a violation of any dry nightclub regulations within two (2) years immediately preceding the application;
  - (1) An applicant has failed to obtain a certification from the fire marshal and building inspector that the dry nightclub complies with all applicable provisions of fire, life safety and building codes, relative to places of assembly, including but not limited to maximum permitted occupancy load;
  - (5) An applicant has failed to obtain a certification from the zoning administrator that the dry nightclub complies with all applicable provisions of the Zoning Code, including but not limited to approval of a conditional use by the Board of Zoning Appeals (unless grandfathered), parking, and all other requirements; or
  - (6) An applicant has been convicted of a crime:
    - (a) Involving:
      - 1. Any felony,

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2. Any misdemeanor offense of abduction, assault, battery, bribery/obstructing justice, carrying deadly weapon/hand gun violations, controlled dangerous substances, fraud, gaming violations, nudity/sexual display/obscene matter violations, pandering, sexual offenses, theft; or
3. Any violation of dry nightclub or similar regulations of any other city, county, or state government; and

(b) For which:

1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.
4. The fact that a conviction is being appealed has no effect on the disqualifications of the applicant under subsection (a) above.

- B. The application shall be reviewed by the police department, the fire marshal and the department of building and zoning for compliance with the provisions of this section. Review shall be conducted by the police department, fire marshal and department of building and zoning within thirty (30) days from the receipt of the application by the City Manager, and their comments forwarded to the City Manager for consideration in issuance of the license in accordance with the provisions hereof.
- C. The City Manager, upon approving an application for issuance or renewal of a dry nightclub license, shall forward the application to the Mayor and City Council for final approval. Upon final approval by the Mayor and City Council, the City Manager shall send to the applicant, by certified mail, return receipt requested, written notice of that action and state where the applicant must pay the license fee and obtain the license. The City Council's approval of the issuance of a license does not authorize the applicant to operate a dry nightclub until the

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applicant has paid all fees required by this chapter and obtained possession of the license.

- D. If, after review of the application and related information, the City Manager denies the application, the City Manager shall send a letter recommending denial to the Mayor and City Council for their review within 60 days of the application. A copy of the letter will be sent to the applicant by certified mail. Following a public hearing, the Mayor and City Council may uphold or overrule the City Manager's recommendation.
- E. The License shall state on its face the name of the person(s) to whom it is granted, the expiration date, the address of the dry nightclub, and whether it is issued for a minor dry nightclub or adult dry nightclub.
- F. The license must be posted in a conspicuous place at or near the main entrance to the dry nightclub so that it may be easily read at any time.
- G. No license shall be issued or renewed to any person who has not :
  - (1) paid any personal property taxes for which a bill has been rendered;
  - (2) paid any real property taxes due if the licensee owns the premises; or
  - (3) paid any CDMA dues or other fees which may be outstanding; or
  - (4) paid all required dry nightclub application fees.

### **§ 121-5. Fees.**

The application and renewal fee for each dry nightclub license shall be \$200.00. Licensees must also apply for and obtain a City business license as required under Chapter 109 of this Code, but no additional license fee shall be required. The application fee must be submitted with the application for a license, and is non-refundable.

### **§ 121-6. Transfer of license.**

A licensee shall not transfer a license to another person, nor shall a licensee operate a dry nightclub under the authority of a license at any place other than the address designated in the application.

### **§121-7. Expiration of license.**

- A. A license for a dry nightclub expires on August 31 of each year. A license may be renewed only by making application as provided in section 121-3. Application for renewal should be made at least sixty (60) days before the expiration date, and when

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made less than sixty (60) days before the expiration date, the expiration of the license will not be affected by the pendency of the application.

- B. If the City Council denies renewal of a license, the applicant may not be issued any dry nightclub license for one (1) year from the date denial becomes final. If, subsequent to denial, the City Manager reports to the City Council that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the denial became final.

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### **ARTICLE III Regulations**

#### **§ 121-8. Persons under twenty-one (21) prohibited in adult dry nightclub.**

- A. No person under the age of twenty-one (21) years may enter an adult dry nightclub unless accompanied by a parent or guardian.

No person shall falsely represent himself to be either a parent or guardian of another person under the age of twenty-one (21) years for the purpose of gaining the other person's admission into an adult dry nightclub.

- C. No licensee or employee of an adult dry nightclub shall knowingly allow a person under the age of twenty-one (21) years to enter or remain on the premises of an adult dry nightclub.
- D. No licensee of an adult dry nightclub shall maintain or operate the premises without posting a sign at each entrance to the business that reads: "It is unlawful for any person under twenty-one (21) years of age to enter this premises without a parent or guardian." The sign shall be at least four square feet in size and the lettering shall be at least one inch in height.

#### **§ 121-9. Persons under the age of fifteen (15) or twenty-one (21) years of age and over prohibited in minor dry nightclub.**

- A. No person under the age of fifteen (15) or twenty-one (21) years of age and over may enter a minor dry nightclub.
- B. No person shall falsely represent himself to be fifteen (15) years of age or older or under twenty-one (21) years of age for the purpose of gaining admission to a minor dry nightclub.
- C. No licensee or employee of a minor dry nightclub shall knowingly allow a person under the age of fifteen (15) or twenty-one (21) years of age or over to enter or remain on the premises of the minor dry nightclub.
- D. No licensee of a minor dry nightclub shall maintain or operate the premises without posting a conspicuous sign at the entrance to the business that reads: "It is unlawful for any person under the age of fifteen (15) or age twenty-one (21) years of age or over to enter this premises." The sign shall be at least four square feet in size and the lettering shall be at least one inch in height.



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- E. It is a defense to prosecution under subsections (a) and © that the person is:
- (1) A licensee or employee of the dry nightclub;
  - (2) A parent or guardian of a person inside the dry nightclub; or
  - (3) A governmental employee in the performance of official duties.
- F. Valid identification including photograph and birth date must be provided by any person entering or remaining in a minor dry nightclub.

### **§ 121-10. Hours of operation (admissions and sales).**

- A. No person shall operate a minor dry nightclub during any hours other than 4:00 p.m. to midnight, with all patrons off the premises by 12:30\_a.m.
- B. No person shall operate an adult dry nightclub during any hours other than 4:00 p.m. to 1:30 a.m. of the following day with all patrons off the premises by 2:00 a.m.
- C. No person shall operate a dry nightclub on Sundays except for the period from midnight to 1:30 a.m. for an adult dry nightclub.

### **§ 121-11. Public Safety.**

- A. Security. The following security shall be provided at all dry nightclubs:
- (1) There shall be a minimum of two interior security personnel at least 21 years of age on duty during the hours when the club is open. If the capacity of the club exceeds 200 persons, one additional security person shall be required for each 50 persons over 200. The function of the security personnel shall be only security; they shall not perform other jobs such as dishwashers, bartenders, doorkeepers, etc., while customers are in the building. Security personnel shall be attired in a manner to be clearly identifiable as security personnel. Security personnel must pass a background check similar to day-care workers.
  - (2) When required by the City Manager, exterior security personnel shall be provided, subject to the same requirements of 11(a)1.
- B. Life Safety. No person shall operate a dry nightclub in violation of any applicable provisions of Fire, Building or the Life Safety Codes.

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### **§ 121-12. Zoning Code.**

No person shall operate a dry nightclub in violation of any applicable provisions of the Zoning Code.

### **§ 121-13. Dry nightclub supervisor.**

- A. A person who operates a dry nightclub shall designate a person as the dry nightclub supervisor and shall register that supervisor's name with the City Manager.
- B. The person designated as the dry nightclub supervisor shall comply with the requirements set forth in section 121-4 for applicants.
- C. The person designated as the dry nightclub supervisor shall remain on the premises of the dry nightclub during all hours of operation and until thirty (30) minutes after closing to ensure that the operation is conducted in accordance with all dry nightclub regulations hereof.

### **§ 121-14. Inspection.**

- A. Application for, and issuance of, any dry nightclub license shall constitute consent by the licensee for representatives of Pocomoke City or any other governmental agency to enter and inspect the premises of the dry nightclub at any time it is open for business or occupied for the purpose of verifying compliance with the law.
- B. No person who operates a dry nightclub or a person designated as the dry nightclub supervisor shall refuse to permit a lawful inspection of the premises of a dry nightclub by a representative of Pocomoke City or any governmental agency at any time it is open for business or occupied.

### **§ 121-15. Conduct on the licensed premises.**

- A. The following rules of conduct, the observance of which by all persons on a dry nightclub premises shall be the strict responsibility of the licensee, shall apply to all dry nightclubs.
  - (1) Attire and conduct. With respect to attire and conduct, a person may not:
    - (a) Be employed in or upon the premises while the person is unclothed or in attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals;

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- (b) Be employed or act as a host or act in a similar-type capacity to mingle with the patrons while the host or person acting in a similar-type capacity is unclothed or in attire, costume or clothing as described in paragraph (1) a. of this subsection;
  - (c) Encourage or permit any person on the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person; or
  - (d) Permit any employee or person to wear or use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion of it.
- (2) Entertainment provided generally. With respect to entertainment provided, a person may not:
- (a) Permit any person to perform acts or acts which simulate;
    - 1. The act of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
    - 2. The touching, caressing or fondling of the breast, buttocks, anus or genitals; or
    - 3. The display of the pubic hair, anus, vulva or genitals.
  - (b) Permit any entertainer whose breasts and/or buttocks are exposed to perform; or
  - © Permit any person to use artificial devices or inanimate objects to depict, perform or simulate any activity prohibited by this subsection.
- (3) Motion pictures, still pictures, electronic or other visual reproductions. A person may not exhibit or show any motion picture film, still picture, electronic reproduction or other visual reproduction depicting:
- (a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
  - (b) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals;
  - © Scenes where a person displays the vulva or anus or the genitals;

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or

(d) Scenes where artificial devised or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

(4) Persons exposing genitals, etc. A person may not permit any person to remain in or upon the licensed premises who exposes to public view any portion of female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

(5) Effect of other statutes, ordinances, rules or regulations. – The provisions of this section do not permit any conduct or form of attire prohibited by any other provisions of statute, ordinance, rule or regulation.

B. Smoking or chewing of tobacco products shall be prohibited in all dry nightclubs.

C. Contest, exhibitions, shows or demonstrations involving the display of the human body in such a manner as to titillate, excite or entertain the patrons or to promote any type of goods or services shall be prohibited in all dry nightclubs.

D. Alcoholic beverages of any type shall be prohibited in all dry nightclubs.

E. Any dry nightclub premises must be completely enclosed and sound-proofed so that undue, loud or disturbing sounds are not emitted off of the premises. No activity shall be permitted outside the building other than parking, ingress and egress.

F. Patrons will not be permitted to congregate within the parking lot. All parking lots shall be designated, maintained and lit in such a way as to maximize visibility of both the patrons and their vehicles.

G. No person may possess any weapon, firearm or explosive device on any dry nightclub premises.

H. There shall be no outside amplification of any sound.

I. There shall be no outside hawking or soliciting at any time.

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### **ARTICLE IV Violations and Penalties**

#### **§121-16. Hearings.**

Upon receipt of written documentation from the Police Chief, Fire Marshal, Building Code Inspector or other governmental source that a violation(s) of this chapter has occurred, the City Manager shall notify the licensee(s) of the alleged violation(s) by hand delivery or certified mailing, and shall refer the suspected violation(s) to the Mayor and City Council for hearing. The City Council shall hold a hearing on the violation not less than seven days but no more than thirty days after the date of the notice to the licensee. After the hearing thereon, if the City Council determines, upon a preponderance of the evidence, that a violation has occurred, the City Council may take the appropriate action as hereinafter set forth.

#### **§121-17. Suspension.**

A. The City Council may suspend or refuse to renew a dry nightclub license for a period of time not exceeding thirty (30) days if the City Council determines that a licensee or an employee of a licensee has committed any one (1) or more of the following acts:

- (1) Violated any provisions of the dry nightclub regulations in this chapter;
- (2) Refused to allow an inspection of the dry nightclub premises so authorized in this chapter;
- (3) Knowingly permitted an intoxicated person to remain on the premises;
- (4) Knowingly permitted gambling by any person on the dry nightclub premises; or
- (5) Knowingly permitted the possession, consumption, or sale of illegal drugs or any alcoholic beverage on the premises of a dry nightclub.

B. If mitigating circumstances so warrant, in lieu of a suspension, the City Council may issue a reprimand or levy a fine not to exceed five hundred dollars (\$500.00) per violation.

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### §121-18. Revocation.

- A. The City Council shall revoke a license if a cause of suspension under section 121-17 occurs and the license has been previously suspended within the preceding twelve (12) months.
- B. The City Council shall revoke a license if the City Council determines that one (1) or more of the following is true:
  - (1) A licensee has given false or misleading information in connection with an initial application or renewal application;
  - (2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled dangerous substances or any derivative thereof on the premises;
  - (3) A licensee or an employee knowingly permitted dancing, a disc jockey or a live performance during a period of time when the dry nightclub license was suspended; or.
  - (4) A licensee has been:
    - (a) Convicted of an offense listed in section 121-4 for which the time period required in section 121-4 has not elapsed; or
    - (b) Convicted of or is under indictment for any felony offense while holding a dry nightclub license.
  - (5) While an employee of the dry nightclub, and while on the licensed premises, a person has committed an offense listed in section 121-4, for which a conviction has been obtained, two (2) or more times within a twelve (12) month period.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- D. When the City Council revokes a license, the revocation will continue for one (1) year, and the licensee may not be issued any dry nightclub license for one (1) year from the date revocation became final. After one (1) year, the former licensee may begin the application process for a new dry nightclub license. If, subsequent to revocation, the City Council finds that the basis for the revocation action has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became final. If the license was revoked under subsection (b) (4) hereof, an applicant may not be granted another license until the appropriate number of years required under section 121-4 has elapsed.

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### **§ 121-20. Penalties and remedies.**

A person who operates or causes to be operated a dry nightclub without a valid license or in violation of any provision of this article shall be subject to the following penalties and/or remedies:

- A. Violations of this article are misdemeanors, and upon conviction thereupon subject to a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment of not more than thirty (30) days or both.
- B. Each day that any violation continues after receipt of a written notice of such violation shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.
- C. In addition to the penalties and remedies above, the city may institute any appropriate civil or criminal action or proceedings to prevent, restrain, correct or abate a violation of this chapter, as provided by law.